

IC 6-2.5-4

Chapter 4. Retail Transactions of a Retail Merchant

IC 6-2.5-4-1 Version a

Selling at retail

Note: This version of section effective until 1-1-2004. See also following version of this section, effective 1-1-2004.

Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food or beverages furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this

subsection only applies if the charges for the serving or delivery are stated separately from the price of the food or beverages when the purchaser pays the charges.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1987, SEC.14; P.L.6-1987, SEC.5; P.L.277-1993(ss), SEC.40.

IC 6-2.5-4-1 Version b

Selling at retail

Note: This version of section effective 1-1-2004. See also preceding version of this section, effective until 1-1-2004.

Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of subdivision (2), charges for delivery are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in

IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1987, SEC.14; P.L.6-1987, SEC.5; P.L.277-1993(ss), SEC.40; P.L.257-2003, SEC.19.

IC 6-2.5-4-2

Wholesale sales; nonretail transactions

Sec. 2. (a) A person is a retail merchant making a retail transaction when he is making wholesale sales.

(b) For purposes of this section, a person is making wholesale sales when he:

(1) sells tangible personal property, other than capital assets or depreciable property, to a person who purchases the property for the purpose of reselling it without changing its form;

(2) sells tangible personal property to a person who purchases the property for direct consumption as a material in the direct production of other tangible personal property produced by the person in his business of manufacturing, processing, refining, repairing, mining, agriculture, or horticulture;

(3) sells tangible personal property to a person who purchases the property for incorporation as a material or integral part of tangible personal property produced by the person in his business of manufacturing, assembling, constructing, refining, or processing;

(4) sells drugs, medical or dental preparations, or other similar materials to a person who purchases the materials for direct consumption in professional use by a physician, hospital, embalmer, funeral director, or tonsorial parlor;

(5) sells tangible personal property to a person who purchases the property for direct consumption in his business of industrial cleaning; or

(6) sells tangible personal property to a person who purchases the property for direct consumption in the person's business in the direct rendering of public utility service.

(c) Notwithstanding any provision of this article, a person is not making a retail transaction when he:

(1) acquires tangible personal property owned by another person;

(2) provides industrial processing or servicing, including enameling or plating, on the property; and

(3) transfers the property back to the owner to be sold by that

owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.246-1985, SEC.9.

IC 6-2.5-4-3

Water softening and conditioning business

Sec. 3. (a) A person is a retail merchant making a retail transaction when he regularly and occupationally engages in the business of softening and conditioning water.

(b) For purposes of this section, the business of softening and conditioning water includes the exchange of water softening and conditioning tanks in the ordinary course of the business, but does not include the preparatory plumbing and work necessary for the first installation of tanks.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-4

Renting or furnishing rooms, lodgings, or other accommodations

Sec. 4. (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

(1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and

(2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

(b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.

(c) For purposes of this section, "consideration" includes a membership fee charged to a customer.

(d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction if:

(1) the person is a promoter that rents a booth or display space to an exhibitor; and

(2) the booth or display space is located in a facility that:

(A) is described in subsection (a)(2); and

(B) is operated by a political subdivision (including a capital improvement board established under IC 36-10-8 or IC 36-10-9) or the state fair commission.

This subsection does not exempt from the state gross retail tax the renting of accommodations by a political subdivision or the state fair commission to a promoter or an exhibitor.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.1; P.L.85-1989, SEC.1; P.L.20-1990, SEC.7.

IC 6-2.5-4-4.5

Complimentary rooms or lodgings

Sec. 4.5. (a) A person is a retail merchant making a retail transaction when the person furnishes rooms or lodgings to another person on a complimentary basis if:

- (1) the rooms or lodgings are furnished for periods of less than thirty (30) days; and
- (2) the rooms or lodgings are located in a hotel, motel, inn, tourist camp, tourist cabin, or other place where rooms or lodgings are regularly furnished for consideration.

(b) The state gross retail tax applicable to a retail transaction described in subsection (a) is measured by the amount of gross retail income attributed to the transaction under this subsection. The amount of gross retail income attributed to a retail transaction described in subsection (a) is equal to the amount of gross retail income received by the retail merchant from renting a comparable room or lodging on the date the complimentary room or lodging is provided. The state gross retail tax imposed on a retail transaction described in subsection (a) is six percent (6%) of the gross retail income attributed to the transaction.

As added by P.L.224-2003, SEC.49.

IC 6-2.5-4-5

Power subsidiaries of public utilities

Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction when:

- (1) the power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b);
- (2) the power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter; or
- (3) the power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in

manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.48-1984, SEC.1; P.L.71-1993, SEC.4.

IC 6-2.5-4-6

Telecommunication services of public utilities

Sec. 6. (a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) furnishes or sells an intrastate telecommunication service; and
- (2) receives gross retail income from billings or statements rendered to customers.

(c) Notwithstanding subsection (b), a person is not a retail merchant making a retail transaction when:

- (1) the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a);
- (2) the person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter;
- (3) the person furnishes telecommunications services described in subsection (a) to another person who is using a prepaid telephone calling card or prepaid telephone authorization number described in section 13 of this chapter; or
- (4) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15).

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.71-1993, SEC.5; P.L.8-1996, SEC.3; P.L.8-1998, SEC.1; P.L.104-2002, SEC.1.

IC 6-2.5-4-7 Repealed

(Repealed by P.L.71-1993, SEC.28.)

IC 6-2.5-4-8

Governmental entities; private or proprietary activities

Sec. 8. An Indiana governmental entity, agency, instrumentality, or political subdivision (including a state college or university) is a retail merchant making a retail transaction when it performs private or proprietary activities that would constitute retail transactions under this article if those activities were performed by a retail merchant. However, this section does not apply to a political subdivision that performs an activity that is related to an annual festival, carnival, fair, or similar event.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.2.

IC 6-2.5-4-9

Sale of property to be added to structures or facilities; exemption

Sec. 9. (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

- (1) is to be added to a structure or facility by the purchaser; and
- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-10 Version a

Rental or leasing of personal property; sale of property rented or leased in course of business; exclusion

Note: This version of section effective until 1-1-2004. See also following version of this section, effective 1-1-2004.

Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

- (1) the person who pays to rent or lease the film charges admission to those who view the film; or
- (2) the person who pays to rent or lease the film or tape

broadcasts the film or tape for home viewing or listening.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-10 Version b

Rental or leasing of personal property; sale of property rented or leased in course of business; exclusion

Note: This version of section effective 1-1-2004. See also preceding version of this section, effective until 1-1-2004.

Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

- (1) the person who pays to rent or lease the film charges admission to those who view the film; or
- (2) the person who pays to rent or lease the film or tape broadcasts the film or tape for home viewing or listening.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.20.

IC 6-2.5-4-11

Cable television service

Sec. 11. (a) A person is a retail merchant making a retail transaction when he furnishes local cable television service or intrastate cable television service.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of local cable television service or intrastate cable television service.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-12

Auction sales; exceptions

Sec. 12. (a) A person is a retail merchant making a retail transaction when he sells tangible personal property at auction.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

- (1) he makes isolated or occasional sales of tangible personal property at auction;
- (2) the sales occur on the premises of the owner of the tangible personal property; and
- (3) the owner of the tangible personal property did not

originally acquire that property for resale.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-13

Definition of retail merchant making retail transaction

Sec. 13. A person is a retail merchant making a retail transaction when a person sells:

- (1) a prepaid telephone calling card at retail;
- (2) a prepaid telephone authorization number at retail;
- (3) the reauthorization of a prepaid telephone calling card; or
- (4) the reauthorization of a prepaid telephone authorization number.

As added by P.L.8-1998, SEC.2.

IC 6-2.5-4-14

Notice; proposed public vendors; identification of delinquent tax payers

Sec. 14. The department of administration and each purchasing agent for a state educational institution (as defined in IC 20-12-0.5-1) shall provide the department with a list of every person who desires to enter into a contract to sell property or services to an agency (as defined in IC 4-13-2-1) or a state educational institution. The department shall notify the department of administration or the purchasing agent of the state educational institution if a person on the list does not have a registered retail merchant certificate or is delinquent in remitting or paying amounts due to the department under this article.

As added by P.L.254-2003, SEC.4.